

AMENDED IN SENATE APRIL 22, 2009

SENATE BILL

No. 553

Introduced by Senator Wiggins

February 27, 2009

An act to amend Sections ~~927.2~~ 927.1, 927.2, 927.6, 927.7, and 927.11 of the Government Code, relating to claims against state agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 553, as amended, Wiggins. Payment of state claims: grants: nonprofit public benefit corporations.

The California Prompt Payment Act generally governs the payment of invoices by state agencies. The act requires a state agency that *acquires property pursuant to a contract with a business, or that awards a grant*, as defined, to make payment to the person or business ~~that is the recipient of the grant~~ on the date required by the *contract or grant*, and within a specified period from the receipt of an undisputed invoice, or be subject to a late payment penalty. Existing law defines a grant for the purposes of these provisions as a signed final agreement between any state agency and a local government agency or organization authorized to accept grant funding for victim services or prevention programs administered by any state agency.

This bill would *extend the above provisions regarding late payment penalties to contracts with, or grants to, a nonprofit public benefit corporation*. The bill would apply the above requirement regarding the timely payment of grants to any signed final agreement between any state agency and a local government agency or organization authorized to accept grant funding administered by any state agency.

Existing law provides that a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than \$500,000.

This bill would delete that limitation on the eligibility of a nonprofit organization to receive a penalty payment.

The act provides that, in the event a state agency fails to make timely payment because no Budget Act has been enacted, penalties shall continue to accrue until the time that the invoice is paid. Existing law provides that a nonprofit public benefit corporation is not eligible for a late payment penalty in those circumstances.

This bill would delete the above eligibility provision regarding nonprofit public benefit corporations, thereby making those corporations eligible for late payment penalties under the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 927.1 of the Government Code is amended
- 2 to read:
- 3 927.1. (a) (1) A state agency that acquires property or services
- 4 pursuant to a contract, *as defined in subdivision (b) of Section*
- 5 927.2, with a business *or nonprofit public benefit corporation*,
- 6 including any approved change order or contract amendment, shall
- 7 make payment to the person~~or~~, business, *or corporation* on the
- 8 date required by the contract and as required by Section 927.4 or
- 9 be subject to a late payment penalty.
- 10 (2) A state agency that awards a grant, as defined in subdivision
- 11 ~~(b)~~ (c) of Section 927.2, shall make payment to the person~~or~~,
- 12 business, *or nonprofit public benefit corporation* that is the
- 13 recipient of the grant on the date required by the grant and as
- 14 required by Section 927.4 or be subject to a late payment penalty.
- 15 (b) Except in the event of an emergency as provided in Section
- 16 927.11, effective January 1, 1999, the late payment penalties
- 17 specified in this chapter may not be waived, altered, or limited by
- 18 either of the following:
- 19 (1) A state agency acquiring property or services pursuant to a
- 20 contract or that awards a grant.
- 21 (2) Any person or business contracting with a state agency to
- 22 provide property or services or that is the recipient of a grant.

1 **SECTION 1.**

2 **SEC. 2.** Section 927.2 of the Government Code is amended to
3 read:

4 927.2. The following definitions apply to this chapter:

5 (a) “Claim schedule” means a schedule of invoices prepared
6 and submitted by a state agency to the Controller for payment to
7 the named claimant.

8 (b) “Contract” means a legally binding agreement between the
9 state and another public or private entity for the provision of goods
10 or services.

11 ~~(b)~~

12 (c) “Grant” means a signed final agreement between any state
13 agency and a local government agency or organization authorized
14 to accept grant funding administered by any state agency. Any
15 such grant is a contract and subject to this chapter.

16 ~~(e)~~

17 (d) “Invoice” means a bill or claim that requests payment on a
18 contract under which a state agency acquires property or services
19 or pursuant to a signed final grant agreement.

20 ~~(d)~~

21 (e) “Medi-Cal program” means the program established pursuant
22 to Chapter 7 (commencing with Section 14000) of Part 3 of
23 Division 9 of the Welfare and Institutions Code.

24 ~~(e)~~

25 (f) “Nonprofit public benefit corporation” means a corporation,
26 as defined by subdivision (b) of Section 5046 of the Corporations
27 Code, that has registered with the Department of General Services
28 as a small business.

29 ~~(f) “Nonprofit service organization” means a nonprofit entity~~
30 ~~that is organized to provide services to the public.~~

31 (g) “Reasonable cause” means a determination by a state agency
32 that any of the following conditions are present:

33 (1) There is a discrepancy between the invoice or claimed
34 amount and the provisions of the contract or grant.

35 (2) There is a discrepancy between the invoice or claimed
36 amount and either the claimant’s actual delivery of property or
37 services to the state or the state’s acceptance of those deliveries.

38 (3) Additional evidence supporting the validity of the invoice
39 or claimed amount is required to be provided to the state agency
40 by the claimant.

1 (4) The invoice has been improperly executed or needs to be
2 corrected by the claimant.

3 (5) The state agency making the determination or the claimant
4 involved has been subject to a computing or accounting failure
5 related to the Year 2000 Problem.

6 (h) “Received by a state agency” means the date an invoice is
7 delivered to the state location or party specified in the contract or
8 grant or, if a state location or party is not specified in the contract
9 or grant, wherever otherwise specified by the state agency.

10 (i) “Required payment approval date” means the date on which
11 payment is due as specified in a contract or grant or, if a specific
12 date is not established by the contract or grant, 30 calendar days
13 following the date upon which an undisputed invoice is received
14 by a state agency.

15 (j) “Revolving fund” means a fund established pursuant to
16 Article 5 (commencing with Section 16400) of Division 4 of Title
17 2.

18 (k) “Small business” means a business certified as a “small
19 business” in accordance with subdivision (d) of Section 14837.

20 (l) “Small business” and “nonprofit organization” mean, in
21 reference to providers under the Medi-Cal program, a business or
22 organization that meets all of the following criteria:

23 (1) The principal office is located in California.

24 (2) The officers, if any, are domiciled in California.

25 (3) If a small business, it is independently owned and operated.

26 (4) The business or organization is not dominant in its field of
27 operation.

28 (5) Together with any affiliates, the business or organization
29 has gross receipts from business operations that do not exceed
30 three million dollars (\$3,000,000) per year, except that the Director
31 of Health Services may increase this amount if the director deems
32 that this action would be in furtherance of the intent of this chapter.

33 (m) “Year 2000 Problem” has the same meaning as that set forth
34 in subdivision (a) of Section 3269 of the Civil Code.

35 *SEC. 3. Section 927.6 of the Government Code is amended to*
36 *read:*

37 927.6. (a) State agencies shall pay applicable penalties, without
38 requiring that the claimant submit an additional invoice for these
39 amounts, whenever the state agency fails to submit a correct claim
40 schedule to the Controller by the required payment approval date.

1 The penalty shall cease to accrue on the date the state agency
2 submits the claim schedule to the Controller for payment, and shall
3 be paid for out of the state agency's funds. If the claimant is a
4 certified small business, a nonprofit organization, a nonprofit public
5 benefit corporation, or a small business or nonprofit organization
6 that provides services or equipment under the Medi-Cal program,
7 the state agency shall pay to the claimant a penalty of one-quarter
8 of 1 percent of the amount due, per calendar day, from the required
9 payment date. ~~However, a nonprofit organization shall only be~~
10 ~~eligible to receive a penalty payment if it has been awarded a~~
11 ~~contract or grant in an amount less than five hundred thousand~~
12 ~~dollars (\$500,000).~~

13 (b) For all other businesses, the state agency shall pay a penalty
14 at a rate of 1 percent above the rate accrued on June 30 of the prior
15 year by the Pooled Money Investment Account, not to exceed a
16 rate of 15 percent, except that, if the amount of the penalty is
17 seventy-five dollars (\$75) or less, the penalty shall be waived and
18 not paid by the state agency. On an exception basis, state agencies
19 may avoid payment of penalties, for failure to submit a correct
20 claim schedule to the Controller by the required payment approval
21 date, by paying the claimant directly, from the state agency's
22 revolving fund within 45 calendar days following the date upon
23 which an undisputed invoice is received by the state agency.

24 *SEC. 4. Section 927.7 of the Government Code is amended to*
25 *read:*

26 927.7. The Controller shall pay claimants within 15 calendar
27 days of receipt of a correct claim schedule from the state agency.
28 If the Controller fails to make payment within 15 calendar days
29 of receipt of the claim schedule from a state agency, the Controller
30 shall pay applicable penalties to the claimant without requiring
31 that the claimant submit an invoice for these amounts. Penalties
32 shall cease to accrue on the date full payment is made, and shall
33 be paid for out of the Controller's funds. If the claimant is a
34 certified small business, a nonprofit organization, a nonprofit public
35 benefit corporation, or a small business or nonprofit organization
36 that provides services or equipment under the Medi-Cal program,
37 the Controller shall pay to the claimant a penalty of one-quarter
38 of 1 percent of the amount due, per calendar day, from the 16th
39 calendar day following receipt of the claim schedule from the state
40 agency. ~~However, a nonprofit organization shall only be eligible~~

1 to receive a penalty payment if it has been awarded a contract or
2 grant in an amount less than five hundred thousand dollars
3 (\$500,000). For all other businesses, the Controller shall pay
4 penalties at a rate of 1 percent above the rate accrued on June 30
5 of the prior year by the Pooled Money Investment Account, not
6 to exceed a rate of 15 percent, except that, if the amount of the
7 penalty is seventy-five dollars (\$75) or less, the penalty shall be
8 waived and not paid by the Controller.

9 ~~SEC. 2.~~

10 *SEC. 5.* Section 927.11 of the Government Code is amended
11 to read:

12 927.11. (a) Except in the case of a contract with a certified
13 small business, a nonprofit organization, or a nonprofit public
14 benefit corporation, if an invoice from a business under a contract
15 with the Department of Forestry and Fire Protection would become
16 subject to late payment penalties during the annually declared fire
17 season, as declared by the Director of Forestry and Fire Protection,
18 then the required payment approval date shall be extended by 30
19 calendar days.

20 (b) If the Director of Finance determines that a state agency or
21 the Controller is unable to promptly pay an invoice as provided
22 for by this chapter due to a major calamity, disaster, or criminal
23 act, then otherwise applicable late payment penalty provisions
24 contained in Section 927.7 shall be suspended except as they apply
25 to a claimant that is either a certified small business, a nonprofit
26 organization, a nonprofit public benefit corporation, or a small
27 business or nonprofit organization that provides services or
28 equipment under the Medi-Cal program. The suspension shall
29 remain in effect until the Director of Finance determines that the
30 suspended late payment penalty provisions of this section should
31 be reinstated.

32 (c) In the event a state agency fails to make timely payment
33 because no Budget Act has been enacted, penalties shall continue
34 to accrue until the time that the invoice is paid.